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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 25-1116

Filed 16 September 2026

Wayne County, No. 18CR054210-950

STATE OF NORTH CAROLINA

v.

ROCKY MARCIANA ASHFORD, Defendant.

Appeal by defendant from judgment entered 4 April 2024 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 19 May 2026.

*Attorney General Jeff Jackson, by Assistant Attorney General Meghan E. Boyd Ward, for the State.*

*Lockamy Law Firm, by C. Scott Holmes for defendant-appellant.*

PER CURIAM.

Defendant Jahvon Lassiter appeals from the trial court's judgment entered consisting with the jury verdict convicting him of first-degree murder. Defendant contends that the trial court erred by not declaring a mistrial and, alternatively, his attorney provided ineffective assistance of counsel.

I. Background

A jury found Defendant guilty of first-degree murder for the death of a woman whose body was discovered in October 2018 in a laundry cart on a public sidewalk in

Goldsboro. The evidence offered at trial tended to show as follow:

On the morning of 8 October 2018, two individuals discovered the body of the victim in a rolling canvas laundry cart. The body was half naked, wearing no underwear or shoes. Investigators found another rolling canvas laundry cart in the dumpster behind a nearby building. A wooded area is located adjacent to the property where the dumpster was located. The wooded area contained a campsite where Defendant lived. Investigators found in the wooded area shoes matching the size worn by the victim, a pair of women's underwear, and a plastic tote bag with mail addressed to Defendant.

A security camera from a business located near the scene captured Defendant walking with a woman, holding hands, into the wooded area the night before the victim's body was discovered. The camera also captured video of Defendant, the same night, removing a laundry cart from the dumpster, wheeling it to the wooded area, and then returning, walking the cart in the direction where the cart holding the victim's body was later discovered.

When questioned by investigators regarding the video, Defendant exclaimed, "You got me man, you got me, just go ahead and put me in handcuffs. I got to have a lawyer." After Defendant made a request for an attorney, the interview ceased.

An autopsy of the victim's body showed that the victim had suffered a fracture of a bone in her neck, as well as many small bruises and cuts. An expert opined that the victim had been strangled to death. Defendant's DNA was found on the victim's

body, indicating Defendant had had sexual relations with the victim. Also, DNA evidence confirmed that the underwear found at the campsite belonged to the victim and that Defendant's DNA was also found on the underwear. Further, the victim's blood was found on the jeans Defendant was wearing during his interview.

The jury convicted Defendant of first-degree murder based on premeditation and deliberation and was sentenced to life without the possibility of parole. He appeals.

## II. Analysis

Defendant makes four arguments on appeal, which we address in turn.

### A. Failure to Order Mistrial Based on Prosecutor's Nonverbal Conduct

First, Defendant contends the trial court erred by denying Defendant's motion for a mistrial based on nonverbal conduct by the prosecutor during trial. Specifically, at trial, Defendant's counsel moved for a mistrial, noting that the prosecutor "kicked back in his chair, placed his foot on top of counsel table right in front of the view of the jury", that he left the courtroom on two occasions for a little under twelve minutes, and that he placed his head in his hands when returning to the courtroom, all during the playing of the video of Defendant's interview with investigators. The trial court allowed Defendant's request to play the entire interview recording even though twenty-five minutes of the video merely showed Defendant sitting quietly in the interrogation room awaiting the investigators to arrive. The prosecutor had requested the trial court to not require the jury watch these twenty-five minutes.

Our General Statutes inform that a mistrial is appropriate where an error “result[s] in substantial and irreparable prejudice to the defendant’s case.” N.C.G.S. § 15A-1061. Our Supreme Court has instructed that a mistrial “is a drastic remedy, warranted only for such serious improprieties as would make it impossible to attain a fair and impartial verdict.” *State v. Smith*, 320 N.C. 404, 418 (1987). In any event, whether to grant a mistrial rests in the discretion of the trial court. *State v. Bonney*, 329 N.C. 61, 73 (1991).

Defendant correctly argues that a prosecutor has the duty to uphold a defendant’s right to a fair trial. *See, e.g., State v. Barfield*, 336 N.C. 1, 8 (1994). There were instances at trial, as cited by Defendant, where the prosecutor inappropriately conveyed nonverbal cues in the presence of the jury. And we agree the better practice is for the prosecutor to have remained in a neutral posture during the playing of the video.

However, assuming the prosecutor acted inappropriately, after careful review of the caselaw cited by Defendant and the State, we cannot say the trial court abused its discretion in denying Defendant’s motion for a mistrial.

#### B. Failure to Order Mistrial Based on Prosecutor’s Closing

Second, Defendant contends the trial court erred by failing to declare a mistrial after “the prosecutor asked the jury to infer guilt from [Defendant’s] failure to explain or justify himself [during his interview, an interview where he asserted his right to an attorney].” The prosecutor made the relevant statements during closing.

Specifically, the prosecutor made two separate statements, each of which the trial court struck and on which the trial court instructed the jury.

We note that Defendant's counsel never moved for a mistrial based on these statements. Accordingly, on appeal, Defendant argues the trial court erred by failing to grant a mistrial *ex mero motu*. However, we conclude the trial court did not abuse its discretion in this regard, as the trial court had already struck the statements and had instructed the jury regarding those statements.

Defendant, though, argues that one of the statements by the prosecutor was a constitutional violation, contending the statement touched on Defendant's right to remain silent. During his closing, the prosecutor told the jury how the trial judge would be explaining the concept of "premeditation and deliberation" but then stated how Defendant had an opportunity to explain during his noncustodial interview to provide justification for the victim's death, stating that "[i]f there was an explanation, if there was a justification, don't you think you would have heard it from [Defendant] that day [of his interview]?"

To the extent the prosecutor's comments touched on Defendant's silence, we conclude the trial court's failure to declare a mistrial was not error. First, we note the prosecutor was commenting on Defendant's failure during the noncustodial portion of the interview to justify what he seemed to have admitted he had done. In any event, we conclude any harm was properly cured by the trial court's decision to strike the comments and to instruct the jury to disregard them. *See State v. Trull*,

349 N.C. 428, 452–53 (1998).

Defendant also complains of other statements by the prosecutor during his closing questioning the credibility of Defendant’s counsel and the prosecutor’s “ripping” Defendant’s counsel’s power cord as the prosecutor was moving about the courtroom during closing. *See State v. Sanderson*, 336 N.C. 1, 10 (1994) (noting that “a trial attorney may not make uncomplimentary comments about opposing counsel”).

We have reviewed the record and conclude that the trial court did not commit reversible error in the manner it handled these events rather than declaring a mistrial *ex mero motu*.

C. Ineffective Assistance of Counsel Based on Jury Instruction Issue

Third, Defendant argues his trial counsel committed ineffective assistance of counsel (“IAC”) for arguing *against* the submission of instructions of a lesser-included offense “out of the mistaken belief that there was no evidence to negate premeditation and deliberation.” Defendant essentially argues there were two reasonable inferences the jury could have made from the evidence presented by the State regarding his *mens rea*, as there was no direct evidence of what occurred at the moment of the victim’s death: (1) Defendant strangled the victim with the intent to kill after premeditation and deliberation, which supports a first-degree murder instruction; or (2) Defendant killed the victim during a rough sexual encounter, but not intentionally, which would support an instruction on second-degree murder or involuntary manslaughter.

Our Supreme Court has instructed that “a defendant is entitled to have all lesser degrees of offenses supported by the evidence submitted to the jury as possible alternative verdicts” but that “a trial need not submit lesser included degrees of a crime to the jury when the State’s evidence is positive as to each and every element of the crime charged *and there is no conflicting evidence relating to any element of the charged crime.*” *State v. Millsaps*, 356 N.C. 556, 562 (2002) (emphasis in original) (citation modified).

Here, we agree with the State that the prosecutor offered sufficient evidence from which the jury could find Defendant killed the victim with premeditation and deliberation. *See State v. Richardson*, 328 N.C. 505, 513 (1991) (evidence of death by strangulation found sufficient to support an instruction of premeditation and deliberation). The issue before us is *not* whether the trial court erred by failing to instruct on a lesser degree of homicide. Indeed, assuming Defendant was entitled to such instruction, Defendant would not be entitled to any relief on appeal as his counsel invited the error by asserting to the trial court that such instruction was not warranted. *See State v. Sierra*, 335 N.C. 753, 760 (1994). And to the extent Defendant did not invite the error, again assuming the instruction was required, Defendant would have to show plain error, as he did not request the instruction. *See State v. Carter*, 366 N.C. 496, 501 (2013) (holding that defendant failed to show plain error where the trial court’s failure to give an instruction was error). And as recently explained by our Supreme Court, to show plain error, a defendant must meet a very

high standard by showing the jury “probably” would have rendered a different verdict, but for the trial court’s error. *State v. Allison*, 388 N.C. 664, 670 (2025). Rather, the issue is whether Defendant’s counsel committed an IAC violation.

Of course, again assuming an instruction on a lesser charge was warranted, had Defendant made the request for an instruction and the trial court refused, Defendant would merely need to show that there was a “reasonable possibility” the result would have been different. *State v. Lee*, 370 N.C. 671, 677 (2018).

For an IAC claim, however, a defendant bears the burden to prove *both* his “counsel’s conduct fell below an objective standard of reasonableness” *and* “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Gillard*, 386 N.C. 797, 867 (2024) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). This burden is lower than the burden to show plain error: the burden to show a “reasonable probability” does not require a defendant to show it was more likely than not that the jury would have rendered a different verdict, whereas the burden to show the jury “probably” would have rendered a different verdict *does* require a showing that a different verdict was more likely than not. *State v. Reber*, 386 N.C. 153, 166 (2024).

The burden to show a “reasonable probability” (the standard for an IAC claim) is higher than the burden of showing a “reasonable possibility” (the standard for a preserved error claim). *See id.* at 159 (recognizing that, though similar, a “reasonable possibility” is not the same as a “reasonable probability”); *see also State v. Goins*, 279

N.C. App. 448, 451 (2021) (noting how in that case our Supreme Court had applied “a less taxing standard of ‘reasonable *possibility*’ compared to the ‘reasonable *probability*’ of a different result that must be shown”).

Though IAC claims are generally better handled at a hearing at the trial court level where evidence may be offered, it is appropriate for an appellate court to consider the issue where “the cold record reveals no further investigation is required.” *Gillard*, 386 N.C. at 867.

Here, one could perhaps argue that a reasonable possibility exists that the jury would have convicted Defendant of a lesser degree of homicide if an appropriate instruction had been given. Nevertheless, we conclude we are able to resolve Defendant’s IAC claim based on the cold record, as Defendant’s burden is higher. And we conclude Defendant has failed to meet his burden of showing a “reasonable probability” the jury would have rendered a different verdict had his trial attorney requested an instruction on a lesser degree of homicide (again, assuming the instruction was otherwise warranted). Specifically, there was a strong inference from the State’s evidence that Defendant, indeed, acted with premeditation and deliberation. We note, for example, the testimony from the State’s medical expert regarding the fracture to a bone in victim’s neck, bruising in the area of the victim’s vagina, and the amount and duration of force necessary to strangle someone in a way which would cause the fatal injuries to the victim. *See, e.g., State v. Bullock*, 326 N.C. 253, 258 (1990) (holding that the omission of a second-degree murder instruction was

not error where death occurred by strangulation, noting that “[a]s with any victim of strangulation, death comes slowly”).

Accordingly, even assuming the jury could have reasonably inferred from the State’s evidence Defendant did not act with premeditation and deliberation, we conclude Defendant failed to meet his appellate burden to show a reasonable *probability* exists that the jury would have found a different result. *See Gillard*, 386 N.C. at 867.

#### D. Cumulative Error

Lastly, Defendant argues that the cumulative effect of the errors he identifies warrant a new trial, citing *State v. Wilkinson*, 363 N.C. 382, 426 (2009). However, as explained above, the trial court did not err in many of the ways which Defendant has argued.

### III. CONCLUSION

We conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges GORE and STADING.

Report per Rule 30(e).